

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

THE UNITED STATES OF AMERICA,
ex rel. J. DOUGLAS STRAUSS, *et al.*,

Plaintiffs,

vs.

STEPHEN L. LAFRANCE HOLDINGS,
INC., *et al.*,

Defendants.

Case No. 18-CV-673-GKF-FHM

OPINION AND ORDER

The Motion of Walgreen Co. and Non-Party Richard Ashworth for a Protective Order to Prevent Mr. Ashworth's Deposition, [Dkt. 276], has been fully briefed, [Dkt. 276, 278, 279], and is ripe for decision.

The moveants assert that the deposition of Richard Ashworth would pose an undue burden in that he was president of Walgreens, is no longer employed by Walgreens, and is currently president, CEO, and on the board of directors for Tivity Health, Inc. They assert the apex doctrine applies to prevent his deposition. The moveants further assert that the deposition is not proportional to the needs of the case.

Regardless of Richard Ashworth's final position at Walgreens or the position he occupies with his new employer, it appears that he was personally involved in some measure with the decision about price matching at Walgreens. This circumstance makes the rationale of prohibiting depositions for apex personnel¹ inapplicable to Richard Ashworth and makes the deposition proportional to the needs of the case. Further, the

¹ See *Zuniga v Boeing Co.*, 2007 WL 1072207 (N.D. Okla.) (denying motion to quash deposition of former general manager of Boeing in Tulsa where deponent had personal knowledge of matters at issue).

court is not persuaded that a four-hour video deposition by Zoom or some platform that would allow a remote deposition as proposed by Relator is unduly burdensome.

The Motion of Walgreens Co. and Non-Party Richard Ashworth for a Protective Order to Prevent Mr. Ashworth's Deposition, [Dkt. 276], is DENIED. Non-Party Richard Ashworth is required to present himself at a time mutually agreeable to the parties on or before October 1, 2020 for a video deposition, not to exceed four hours, by Zoom or some other platform that would allow a remote deposition as proposed by Relator.

SO ORDERED this 8th day of September, 2020.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE